IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3348 of 1996
With
SPECIAL CIVIL APPLICATION No. 3364 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRABHUDAYAL RAMDEOJI SHARMA - Petitioner(s)

Versus

DEFENCE ESTATE OFFICER - Respondent(s)

==========

Appearance :
MR RD DAVE for Petitioner(s) : 1,
MS PJ DAVAWALA for Respondent(s) : 1,
MR KETAN A DAVE for Respondent(s) : 1,
MS PROMILA SAFAYA for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/12/2005

COMMON **ORAL JUDGMENT**

1. As the common question of law and facts arise in both these petitions, both these petitions are being disposed of by this common judgment and order.

2. Special Civil Application No.3348 of 1996 is filed by the petitioner challenging the judgment and order passed by 3rd Joint District Judge, Ahmedabad (Rural), at Mirzapur, Ahmedabad dated 21.3.1996 passed in Eviction Civil Appeal No.75 of 1995 in dismissing the same and confirming the order passed by the Defence Estate Officer dated 20.11.1995. The petitioner has also prayed to quash and set aside the judgment and order dated 16.9.1995 passed in Regular Civil Appeal No.68 of 1994.

3. So far as Special Civil Application No.3364 of 1996 is concerned, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the judgment and order passed by the learned 3rd Joint District Judge, Ahmedabad (Rural), Mirzapur dated 21.3.1996 passed in Civil Appeal No.72 of 1995 in dismissing the same and confirming the order passed by the Defence Estate Officer dated 20.11.1995. A further prayer is also made to quash and set aside the judgment and order passed by the

appellate court dated 16.9.1995 passed in Regular Civil Appeal No.64 of 1994.

4. Both the petitioners are residing in the building which are situated in the area controlled under the cantonment board. It appears from the record that the respondent Defence Estate Officer initiated the proceedings for recovering the possession by initiating the proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and orders came to be passed by the Defence Estate Officer (Gujarat Circle), Cantonment, Ahmedabad to demolish unauthorised construction and being aggrieved and dissatisfied with the aforesaid orders, the respective petitioners preferred Appeal No.68 of 1994 and No.64 of 1994 respectively in the Court of learned 3rd Joint District Judge, Ahmedabad (Rural), Mirzapur at Ahmedabad and both the appeals came to be allowed by the judgment and order dated 16.9.95 and the learned appellate court remanded the matter to the Estate Officer for giving specific description,

boundary and measurement of illegal construction made by the respective petitioners and for which, the Estate Officer has initiated the proceedings to recover possession and / or to demolish the construction. It is the contention on behalf of the petitioners that thereafter on remand, the Estate Officer passed the orders afresh by orders dated 20.11.1995, however, the said orders came to be passed without giving any opportunity of being heard to the respective petitioners. It appears from the record that being aggrieved and dissatisfied with the orders passed by the respective Defence Estate Officer dated 20.11.1995, the respective petitioners preferred Eviction Civil Appeal No.74 of 1995 and Eviction Civil Appeal No.72 of 1995 respectively before the learned 3rd Joint District Judge, Ahmedabad (Rural) at Mirzapur, Ahmedabad and both the aforesaid appeals came to be dismissed by the learned appellate court vide its judgment and order dated 22.3.1996. Being aggrieved and dissatisfied with the judgment and orders passed by the appellate court dated 21.3.1996 passed in Eviction Civil Appeal No.74 of

1995 and Eviction Civil Appeal No.72 of 1995, the respective petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

5. Shri R.D.Dave, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the appellate court has materially erred in dismissing the appeal and confirming the order passed by the Estate Officer, more particularly, when the orders passed by the Estate Officer dated 20.11.1995 were without giving any opportunity of being heard to the respective petitioners. It is further submitted that by judgment and order dated 16.9.1995 the learned District Judge remanded the matter to the Estate Officer for giving specific description, boundaries and measurement of illegal construction made by the respective petitioners and thereafter to pass appropriate orders. However, without giving an opportunity to the petitioner and without issuing any notice thereafter i.e. after the remand, orders came to be passed by

the Estate Officer dated 20.11.1995 which are against the principles of natural justice and the same are required to be quashed and set aside.

6. Shri Ketan Dave, learned Addl. Standing Counsel for Central Government appearing on behalf of the respondents, however, supported the orders passed by the Estate Officer as well as the appellate court in dismissing Appeals No.74 and 72 of 1995 by submitting that while remanding the matter the learned appellate court has never passed the order that the petitioners were required to be heard on remand and therefore, the appellate court was justified in dismissing the aforesaid two appeals and confirming the orders passed by the Estate Officer dated 20.11.1995 and therefore, it is requested to dismiss the present special civil applications.

7. Heard the learned advocates appearing on behalf of the parties and also perused all the impugned orders under challenge. By judgment and order dated 16.9.1995, the learned 3rd Joint District Judge,

Ahmedabad (Rural), Mirzapur remanded the matter to the Estate Officer for giving specific description, boundaries and measurement of illegal construction made by the respective petitioners and for which, the Estate Officer has initiated the proceedings to recover possession and / or to demolish the construction. Under the circumstances, before passing any order on remand, the Estate Officer was required to issue notice and / or at least give an opportunity of hearing to the petitioner with regard to description, boundaries and measurement of the illegal construction. In the present case, while passing fresh orders dated 20.11.1995, the Estate Officer has passed the said orders without giving any opportunity to the respective petitioners and the said orders are confirmed by the appellate court. If any opportunity would have been given to the respective petitioners, they might have disputed the description, boundaries and measurement of illegal construction and as such, before passing any order of possession or demolition of the construction on the ground of illegal construction, the petitioners were

required to be given an opportunity to put forward their case. In the present case, as no opportunity was given by the Estate officer, the impugned orders dated 20.11.1995 are in breach of principles of natural justice and the same are required to be quashed and set aside and the orders passed by the appellate court confirming the said orders are also required to be quashed and set aside and the matters are required to be remanded to the Estate Officer for passing the appropriate orders in accordance with law and on merits after giving an opportunity to the respective petitioner for giving specific description, boundaries and measurement of the illegal construction made by the respective petitioners.

8. For the reasons stated above, both petitions succeed partly. The orders passed by the Estate Officer dated 20.11.1995 as well as the judgment and orders passed by the learned 3rd Joint District Judge, Ahmedabad (Rural) at Mirzapur dated 22.3.1996 passed in Eviction Civil Appeals No.74 of 1995 and Eviction

Civil Appeal No.72 of 1995 are hereby quashed and set aside and the matters are remanded to the respondent Defence Estate Officer for passing the appropriate orders in accordance with law and on merits and after giving an opportunity to the respective petitioners for giving specific description and boundaries and measurement of illegal construction made by the respective petitioners and for which, the estate officer has initiated the proceedings to recover possession or to demolish the construction. Such an exercise is to be done within a period of four months from the date of receipt of this orders.

9. Rule is made absolute to the aforesaid extent in both these petitions. However, there shall be no order as to costs.

[M.R.Shah, J.]

=kailash=